In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1674

SANTA ROSA BAND OF INDIANS, et al.,
Plaintiffs and Respondents,

VS.

KINGS COUNTY, et al.,
Defendants and Petitioners.

BRIEF OF THE HUMBOLDT COUNTY COUNSEL, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA, AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE COUNTY OF HUMBOLDT STATE OF CALIFORNIA

The County of Humboldt, State of California is a general purpose political subdivision of the State of California. The County of Humboldt has a vital interest in the issues raised in the decision of the Ninth Circuit Court of Appeals in *Santa Rosa Band of Indians v. Kings County* because the decision, in effect, precludes the application of Humboldt County Ordinances and certain State laws which the County

is charged with enforcing in "Indian country"[1] within the County of Humboldt. The largest Indian reservation in the State of California, the Hoopa Valley Indian Reservation, and numerous Indian rancherias are within the territory of the County of Humboldt. The County of Humboldt is currently litigating its right to enforce County building and zoning ordinances and other ordinances together with the California Environmental Quality Act, Cal. Public Resources Code § 21000 et seq., within the Hoopa Valley Indian Reservation. *United States v. County of Humboldt,* No. C-74-2526 RFP (N.D. Cal.).

The questions presented in the instant case are a matter of continuing importance to the County of Humboldt. The Hoopa Valley Indian Reservation is in excess of several hundred square miles. Pursuant to Federal policy, much of the land within the Hoopa Valley Indian Reservation has been freed of its trust purposes by patents issued by the United States Government. Patented or nontrust lands are owned by non-Indians as well as Indians. The result of this Federal policy may be best described as a random checkerboard of trust and nontrust lands. The squares of the checkerboard may be as small as lots within a subdivision. Another result of this Federal policy is that there are more non-Indians (2,742) than Indians (1,500) residing on the Hoopa Valley Indian Reservation.

The current state of governmental jurisdiction on the reservation is in a state of confusion mainly due

[1]"Indian Country" is defined at 18 U.S.C. § 1151.

to varying interpretations of Public Law 83-280. (Formerly 28 U.S.C. § 1360 re-enacted without relevant change at 25 U.S.C. § 1322.) The County of Humboldt is vested with jurisdiction over the Reservation by the State of California to the extent that the State has jurisdiction, see *Moe v. Confederated Salish and Kootenai Tribes,* ..... U.S. ....., 44 U.S.L.W. 4535 (U.S. Apr. 27, 1976); *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 36 L. Ed. 2d 114, 93 S. Ct. 1267 (1973), and by the Federal Government pursuant to Public Law 83-280. Several Indian tribes reside upon the Hoopa Valley Indian Reservation; however, only one (the Hoopas) have established a governing body recognized by the Bureau of Indian Affairs. The Bureau of Indian Affairs views the governing body of the Hoopa Valley Tribe as functioning only within a portion of the Reservation. Further, the Bureau recognizes the jurisdiction of the governing body of the Hoopa Valley Tribe to be limited to Hoopa Indians and Indian trust properties held in trust for the Hoopa Tribe.

The United States Government owns land within the Reservation and has placed management responsibilities for the Reservation in the Bureau of Indian Affairs. The Bureau of Indian Affairs takes the position that it has neither jurisdiction over non-Indians nor management responsibilities with respect to patented non-trust lands. The Bureau also asserts that it has neither jurisdiction over Indians living upon patented property within the Reservation nor jurisdiction over the use of their property.

The Bureau's restricted view of its responsibilities on the Hoopa Valley Indian Reservation bears little resemblance to its functions in non-Public Law 83-280 States. The function of the Bureau of Indian Affairs outside of the State of California in non-Public Law 83-280 States has been described under oath by the Superintendent of the Hoopa Agency Bureau of Indian Affairs as being "totally different". The Bureau's limited function on Public Law 83-280 Reservations, such as the Hoopa Valley Indian Reservation dates back to the enactment of Public Law 83-280 in 1953. Upon passage of Public Law 83-280, the Bureau of Indian Affairs ceased to provide many of the governmental services that it had previously rendered and which it still renders in non-Public Law 83-280 States. Concurrently, the State of California and her counties and cities assumed the responsibility of providing many of the governmental services which the Bureau of Indian Affairs had previously rendered. Although the exact meaning of Public Law 83-280 is only now being finally determined, it has historically allowed Humboldt County to provide law enforcement services within the Hoopa Valley Indian Reservation, to establish a Justice Court for the administration of justice, to provide for the maintenance and regulation of roads within the Reservation, to enact and enforce health and sanitation ordinances and to provide directly or through other local agencies a full range of governmental services including education, health care and welfare assistance.

Many of these services are developed and contained in County ordinances. By way of illustration, the County of Humboldt has implemented legislative programs by county ordinances in the following areas:

1. The administration of justice within the Reservation is provided by an inferior court named the Klamath-Trinity Justice Court. The jurisdictional boundaries of the Justice Court are established by Humboldt County Ordinance No. 388.

2. The right of the electorate to elect the governing body of the County of Humboldt is dependent upon Humboldt County Ordinance No. 1063 which divides the County into five supervisorial districts. One of these districts includes the Hoopa Valley Indian Reservation.

3. The regulation of traffic on County roads within the Hoopa Valley Indian Reservation and the rancherias scattered throughout the County is accomplished by ordinances of the County of Humboldt. State law requires enactment of ordinances to establish speed limits, boulevard stops, weight limits and similar traffic safety regulations.

4. Certain forms of gambling are regulated by County ordinances. Humb. Co. Ord. Nos. 161 (slot machines) and 396 (card rooms).

5. Humboldt County regulates by ordinance many subjects in the area of health, sanitation and welfare, such as restaurants, Humb. Co. Ord. No. 422, sewage disposal, Humb. Co. Ord. No. 945, and garbage collection and disposal, Humb. Co. Ord. No. 259.

6. Pursuant to agreement with the Bureau of Indian Affairs, the County maintains roads within the Reservation and the several rancherias. The roads are protected from encroachment under Humboldt County Ordinance No. 896.

The holding of the Ninth Circuit in the *Santa Rosa* decision that county ordinances have no force and effect within "Indian country" has an immediate effect upon the above mentioned legislative programs and services provided by the County of Humboldt. Apparently, none of the above County Ordinances can be enforced against non-Indians or Indians, on either trust land or on non-trust lands within the Hoopa Valley Indian Reservation.

The provision of local governmental services is often coordinated and planned by the use of various land use control techniques, such as land use general plans and zoning ordinances. Land use planners agree that planning for an area such as a reservation must be based on all of the land within the reservation. *Santa Rosa* implies that the State can apply zoning and building codes only to those portions of the Reservation checkerboard that are colored non-trust. Adjacent trust squares must be zoned, if at all, by the Federal government. Effective land use planning cannot be done on a random checkerboard basis.

For these reasons, the County of Humboldt is vitally interested in whether County ordinances are applicable to "Indian country" and whether its land use planning programs for "Indian country" have the the force and effect of law. Resolution of the issues

raised will have an immediate effect on the services the County of Humboldt provides for the Hoopa Valley Indian Reservation and other "Indian country" in the County.

INTRODUCTION

The *Santa Rosa* case involves the application of building and zoning ordinances of the County of Kings to a One Hundred Seventy (170) acre rancheria upon which approximately One Hundred (100) people reside. (Clerk's Record [CR] 70-77). The rancheria is occupied by the Santa Rosa Band of Indians which has a governing body recognized by the Secretary of the Interior. (CR 78-79, 255). As will be shown infra it is significant that there is no treaty or Federal agreement between the Santa Rosa Band of Indians or any other Indian tribe within the State of California. 25 U.S.C. § 71 [Prohibiting use of treaties in relations with Indians since 1871]; *Elser v. Gill Net Number One,* 246 Cal. App. 2d 30, 37, 54 Cal. Rptr. 568 (1966); *Acosta v. County of San Diego,* 126 Cal. App. 2d 455, 463, 272 P. 2d 92 (1954).

"Indian country" in California is often unlike the Santa Rosa rancheria. "Indian country" can be of practically any size ranging from a few acres to hundreds of square miles. The characteristics of "Indian country" also vary. It may be isolated rural country or it may be located within or adjacent to urban centers or cities such as the popular resort, Palm Springs, California. Title to "Indian country" may

be vested in the United States of America held in "trust" for an Indian or an Indian tribe or the title may have been conveyed free of that "trust" by the United States Government to an individual. Indians, as well as non-Indians, may reside in "Indian country".

Previous decisions of this Court have established that the jurisdiction of States within Indian reservations is defined by (1) applicable treaties, (2) applicable federal statutes and (3) whether State jurisdiction would impair reservation self-government. *Moe v. Confederated etc. Tribes,* supra; *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 147-149, 36 L. Ed. 2d 114, 119, 93 S. Ct. 1267 (1973); *Organized Village of Kake v. Egan,* 369 U.S. 60, 73-75, 7 L. Ed. 2d 573, 582-583, 82 S. Ct. 562 (1962). There are, as stated above, no applicable treaties and Public Law 83-280 is the controlling Federal statute. Congress has subordinated reservation self-government to the paramount power of Public Law 83-280 States, such as California. 25 U.S.C. § 1322(c). Therefore, the issues presented in this case turn on the interpretation of Public Law 83-280.

The *Santa Rosa* decision rests on several alternative holdings. First, *Santa Rosa* holds that the Kings County building and zoning ordinances are not enforceable because, as interpreted by the Ninth Circuit, county ordinances are not "civil laws of [the] State . . . that are of general application . . . within the State . . . ." for purposes of Public Law 83-280. Second, it holds that such ordinances are "encumbrances" as used in the phrase "[n]othing in this

section shall authorize the alienation, encumbrance, or taxation of any real . . . property . . . that is held in trust . . ." 25 U.S.C. § 1322(b). Each of these holdings is premised upon the conclusion that Public Law 83-280 States have no jurisdiction in "Indian country" except as expressly granted.[2] The remaining holdings of the *Santa Rosa* case will not be discussed in this amicus brief.

COUNTY ORDINANCES

As mentioned earlier, one of the alternative holdings in the *Santa Rosa* opinion is that "County ordinances" can not be enforced in "Indian country" although comparable "State laws" are enforceable. This alternative holding engenders serious practical problems. For example, Humboldt County will lose jurisdiction to apply County ordinances to the Hoopa Valley Indian Reservation or other "Indian country" within the County. The range of subjects governed by Humboldt County ordinances has been mentioned earlier in Humboldt County's Statement of Interest. This distinction between State laws and County ordinances also creates a serious hiatus in needed governmental regulation and services; neither the Bureau of Indian Affairs nor the Hoopa Valley Tribe has comparable legislative programs to fill the void created by the denial of County jurisdiction within "Indian country". Similarly, the record in *Santa Rosa*

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[2]The source of jurisdiction is important to units of local government. As interpreted in *Santa Rosa,* local government has no jurisdiction in "Indian country" under Public Law 83-280. However, the independent jurisdiction of States recognized in *Moe v. Confederated etc. Tribes,* supra, subsists in local government.

fails to show that either the Bureau of Indian Affairs or the Santa Rosa Band of Indians has legislative programs comparable to Kings County.

The California Legislature could close the regulatory void only by altering the form of city and county government contained in Article XI of California Constitution and various State statutes. First, the State of California would have to create new departments or agencies to handle programs that have been historically legislated, funded and manned by local governments. Second, the transfer of regulation from local governments to the State could not be limited to the mere assumption of regulatory power over "Indian country" leaving the remainder of the State under local control. Regulations of the State limited to "Indian country" would be special or discriminatory statutes having no force and effect elsewhere in the State. Such a statute would appear to be proscribed by Public Law 83-280 which provides in part:

> "[t]hose civil laws of such State . . . that are of *general application* to private persons or private property shall have the same force and effect within such Indian country *as they have elsewhere* within the State . . . ." 25 U.S.C. § 1322(a). [Emphasis added.]

A statute limited in effect to "Indian country" would not be of general application and effect and would have no force and effect elsewhere within the State. Thus, California is faced with the dilemma of either leaving "Indian country" unregulated and largely unprotected or of stripping her political subdivisions of their constitutionally granted police powers and

assuming functions historically and more appropriately left to local government.

In conclusion, the *Santa Rosa* decision either requires the State of California to drastically change its form of government and/or it requires the Federal Government to assume the burdensome and costly task of enacting and administering programs comparable to those now provided by Humboldt County.

This large shift in Federal, State and local governmental services turns on the *Santa Rosa* decision which, it must be observed, misapprehends certain facts and is internally inconsistent. First, the *Santa Rosa* holding that County ordinances have no force and effect within "Indian country" is based on a misperception that there is nothing in the legislative history of Public Law 83-280 (28 U.S.C. § 1360) which evidenced Congressional intent to permit local regulation. Appendix 1 to Petition of Kings County at p. 10. The fact is that the legislative history shows that Congress intended to transfer Federal jurisdiction to "[s]tate *and local authorities,*" 1953 U.S. Code Cong. & Adm. News 2412, 2413, 2414; to "political subdivisions", *id.* at 2410; to *"counties," id.* at 2412, 2413; and to the "[s]tate, *county,* or municipal subdivision," *id.* at 2410. (Emphasis added.) Public Law 83-280 was preceded by a lengthy study and report by the Bureau of Indian Affairs, *Investigation of Indian Affairs,* H.R. 2503, 82d Cong. 2d Sess. (1952), which had presumably been requested by the previous session of Congress. H.R. Res. No. 698, 82d Cong., 1st Sess., Rep. No. 2503 (1952). This Bureau report

in recommending transfer of jurisdiction mentions "local authorities" or "counties" no less than 14 times in discussing the effect of the recommended transfer of jurisdiction. Second, the opinion is internally inconsistent. It holds that county ordinances are not enforceable in "Indian country" yet it vacated the United States District Court order enjoining enforcement of any ordinances within the Santa Rosa rancheria. In vacating the District Court injunction, the opinion observes the District Court must:

> "[D]etermine on a case-by-case basis when concrete disputes arise whether the County has jurisdiction to enforce a particular ordinance under the applicable jurisdictional principles enunciated above." Appendix 1 at p. 27.

There is no need for a case-by-case determination if, as the opinion holds, a county ordinance is not a civil law of general application.

The *Santa Rosa* opinion may also be criticized for drawing a distinction in law where a distinction in fact may not exist. The distinction made by the Ninth Circuit Court of Appeals in *Santa Rosa* between "state" and "local" laws ignores the relationship between the State of California and her political subdivisions and it assumes that a clear boundary exists between a "state law" and a "local law". The boundary chosen by the Court is the enacting authority.

This arbitrary boundary does not reflect the legislative process in the State of California. Many State laws, although they embody a policy of statewide concern, rely in whole or in part upon legislative implementation by political subdivisions of the State of California. The ordinances of the County of Kings relating to building codes and zoning are good examples of this.

In 1970 the California State Legislature found that uniformity of building codes throughout the State of California was a matter of statewide interest and concern. Cal. Stats. 1970 Ch. 1436, § 7. This State policy was implemented by the adoption of California Health and Safety Code Section 17922 which specifies that certain uniform industry codes such as the Uniform Building Code must be adopted. This policy was further carried out in California Health and Safety Code Section 17958 which requires each city and county to adopt the Uniform Codes specified in California Health and Safety Code Section 17922. That section further provides that in the event a city or county does not adopt such codes, the codes become effective in that city or county by default. The California Legislature has also provided that in the event a city or county fails to enforce the applicable building code, the State of California will assume enforcement responsibilities and charge the county for the costs of enforcement. Cal. Hlth. & Saf. Code § 17952.

The laws of the State of California relating to mobilehome placement and installation are a similar mix of State and local laws. Cal. Hlth. & Saf. Code § 18613; Cal. Govt. Code §§ 65300-302, 65800, 65860.

In short, it is difficult if not impossible, to draw an effective line between State statutes and local ordi-

nances. In California the two often blend together to form an effective legislative program. Surely Congress did not intend, in passing Public Law 83-280, to restrict the form of State government by creating a simplistic distinction between State statutes and county ordinances. No such arbitrary distinction exists under the inherent jurisdiction of States to apply certain of their laws within "Indian country". See *Moe v. Confederated etc. Tribes,* supra.

ENCUMBRANCES

The second point this brief will address is the *Santa Rosa* alternative holding that "traditional land use regulations", such as building codes and zoning laws are "encumbrances" for purposes of Public Law 83-280. This holding means that neither the State of California nor her cities and counties may enforce building codes and zoning laws against lands in "Indian country" *held in trust* by the United States Government. Since the encumbrance restriction contained in Public Law 83-280, 28 U.S.C. § 1360(b); reenacted at 25 U.S.C. § 1322(b), applies only to trust lands, it may be concluded that the State of California can enforce building codes, zoning laws and other land use regulations on patented (non-trust) lands within "Indian country".

The result of the encumbrance holding is impracticable and illogical land use regulation. It means, for instance, that the State of California can regulate only a portion of the Hoopa Valley Indian Reser-

vation.[3] State and use regulations would not be applicable to those random checkerboard squares that are held in trust by the United States Government. It is evident that land use regulations applicable only to every other lot within a subdivision are impracticable and ineffectual. This is especially true on the Hoopa Valley Indian Reservation because neither the Bureau of Indian Affairs nor the Hoopa Valley tribe have comparable controls. This checkerboard result is inconsistent with Congressional intent and recent Supreme Court cases. In *Moe v. Confederated Salish and Kootenai Tribes,* supra 44 U.S.L.W. at 4540 the Court stated:

> "Congress by its more modern legislation has evinced a clear intent to eschew any such "checkerboard" approach within an existing Indian reservation, and our cases have in turn followed Congress' lead in this area."

The Ninth Circuit's definition of "encumbrance" in *Santa Rosa* also presents serious conceptual difficulties. It is difficult to construct a definition of "encumbrance" which includes a building code and a zoning ordinance but excludes laws controlling gambling or boxing or regulating air or water pollution. Each is directed to controlling profitable human activities. The Uniform Building Code which regulates construction practices is founded on "broad based performance principles . . ." Preface, Uniform Build-

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[3]The encumbrance holding also means that the zoning and building powers of the Papago Council and the Salt River Pima-Maricopa Community Council do not extend to Indian trust lands although it was the intent of Congress to confer such powers. 25 U.S.C. §§ 416-416j; 1966 U.S. Code & Cong. News 1302; 112 Cong. Rec. 27000 (1966).

ing Code (1973 ed.). Similarly, air and water pollution laws generally regulate commercial enterprises by means of performance standards. California boxing regulations are phrased in terms of:

> "Any person, who, within this state . . . being the owner, lessee, agent, or occupant of any vessel, building, hotel, room, enclosure or ground, or any part thereof, whether for gain, hire, reward or gratuitously or otherwise, permits the same to be used or occupied for such a pugilistic contest . . . ." Cal. Penal Code § 412.

This language is quite similar to that found in zoning ordinances. Therefore attempts to define encumbrance in terms of whether the regulation in question affects the use or enjoyment of trust property or its value fail to the extent it is proper to distinguish building and zoning laws from boxing, gambling and pollution laws.

In conclusion, unless the term "encumbrance" is limited to property interests subsisting in third persons to the diminution of its value but consistent with the passing of the fee, the "encumbrance immunity" could encompass every potentially profitable activity. It is submitted such a result would undermine the purpose of Public Law 83-280 to confer jurisdiction upon the States.

CONCLUSION

The case is important from several different aspects.

First, an historical overview of the trend of Congressional policy and judicial opinions discloses the

evolution of a policy to assimilate American Indians into the mainstream of American society. See *Organized Village of Kake v. Egan,* supra, 369 U.S. at 71-74, 7 L. Ed. 2d at 581-583, 82 S. Ct. at 568-570. The *Santa Rosa* opinion appears to retreat from this trend.

Second, the Court in defining State jurisdiction in non-Public Law 83-280 States has by implication or comparison defined State jurisdiction in Public Law 83-280 States. This Court has consisistently inferred in striking down State jurisdiction in previous non-Public Law 83-280 cases, that the result would have been different had the State chosen to assume the federal powers Public Law 83-280 transfers to the States. *Williams v. Lee,* 358 U.S. 217, 3 L. Ed. 2d 251, 79 S. Ct. 269 (1959); *Kennerly v. District Court,* 400 U.S. 423, 27 L. Ed. 2d 507, 91 S. Ct. 480 (1971); *Seymour v. Superintendent,* 368 U.S. 351, 7 L. Ed. 2d 346, 82 S. Ct. 424 (1962); see *Moe v. Confederated etc. Tribes,* supra 44 U.S.L.W. at 4540. These cases underscore the Court's observation in *Williams v. Lee,* supra, 358 U.S. at 221 n.6, 3 L. Ed. 2d at 254, 79 S. Ct. at 271 that Public Law 83-280 granted "broad civil and criminal jurisdiction". Three years later the Court noted that Public Law 83-280 granted States "full civil and criminal jurisdiction". *Organized Village of Kake v. Egan, supra,* 369 U.S. at 74, 7 L. Ed. 2d at 583, 82 S. Ct. at 570. By implication, jurisdiction in non-Public Law 83-280 States should be somewhat more restricted. However, the *Santa Rosa* decision leaves little difference between States which have Public Law 83-280 jurisdiction and those

that don't. Compare *Moe v. Confederated etc. Tribes,* supra; *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 148, 36 L. Ed. 2d 114, 119, 93 S. Ct. 1267, 1270 (1973) with *Omaha Tribe of Indians v. Peters,* 516 F.2d 133 (8th Cir. 1975); but compare *Santa Rosa* with *Norvell v. Sangre de Cristo Dev. Co., Inc.,* 372 F. Supp. 348 (D.N.M. 1974) rev'd on other grounds 519 F.2d 370 (10th Cir. 1975). Surely, Congress intended States to acquire significant jurisdiction through Public Law 83-280.

Third, Public Law 83-280 is a major piece of legislation in the field of Indian affairs. However, with the exception of *Bryan v. Itasca County,* 228 N.W.2d 249 (Minn. 1975), cert. pending No. 75-5027, this Court has not yet substantively considered Public Law 83-280. *Santa Rosa* establishes important precedent in defining the interrelationship of Indians, Indian Tribes, units of local government, the several States, and Federal Government. Necessarily, the issues have great practical ramifications as we have tried to show herein.

The petition for certiorari should be granted.

Dated, June 4, 1976.

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